

Article 10.

Joint and Several Debtors.

§ 1-113. Defendants jointly or severally liable.

Where the action is against two or more defendants, and the summons is served on one or more, but not on all of them, the plaintiff may proceed as follows:

- (1) If the action is against defendants jointly indebted upon contract, he may proceed against the defendants served, unless the court otherwise directs, and if he recovers judgment it may be entered against all the defendants thus jointly indebted, so far only as that it may be enforced against the joint property of all and the separate property of the defendants served, and if they are subject to arrest, against the persons of the defendants served.
- (2) If the action is against defendants severally liable, he may proceed against the defendants served, in the same manner as if they were the only defendants.
- (3) If all the defendants have been served, judgment may be taken against any or either of them severally, when the plaintiff would be entitled to judgment against such defendant or defendants if the action has been against them or any of them alone.
- (4) If the name of one or more partners has, for any cause, been omitted in an action in which judgment has been rendered against the defendants named in the summons, and the omission was not pleaded in action, the plaintiff, in case the judgment remains unsatisfied, may by action recover of such partner separately, upon proving his joint liability, notwithstanding he was not named in the original action; but the plaintiff may have satisfaction of only one judgment rendered for the same cause of action. (C.C.P., s. 87; Code, s. 222; Rev., s. 455; C.S., s. 497.)

§ 1-114. Summoned after judgment; defense.

When a judgment is recovered against one or more of several persons jointly indebted upon a contract in accordance with the preceding section [§ 1-113], those who were not originally summoned to answer the complaint may be summoned to show cause why they should not be bound by the judgment, in the same manner as if they had been originally summoned. A party so summoned may answer within the time specified denying the judgment, or setting up any defense thereto which has arisen subsequent to such judgment; and may make any defense which he might have made to the action if the summons had been served on him originally. (C.C.P., ss. 318, 322; Code, ss. 223, 224; Rev., ss. 456, 457; C.S., s. 498.)

§ 1-115: Repealed by Session Laws 1969, c. 954, s. 4.